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9 UNITED STATES BANKRUPTCY COURT
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11 NORTHERN DISTRICT OF CALIFORNIA

11 In re:) Case No. 08-53123
12 Jerry Ray Bassoni,) CHAPTER 11
13) Adversary Proceeding No. 08-5273
14) Debtor.)
15 Steve Slawinski,) **OPPOSITION TO MOTION TO**
16 Plaintiff) **QUASH AND/OR LIMIT SUBPOENA**
17 v.) **DUCES TECUM**
18 Jerry Ray Bassoni,) Date: September 23, 2009
19 Defendant) Time: 2:15 p.m.
20) Judge: Honorable Arthur S. Weissbrodt
21)
22)

23 **OPPOSITION TO MOTION TO QUASH AND/OR LIMIT SUBPOENA**

24 The defendant Jerry Bassoni has moved to quash and/or limit two subpoenas issued for his
25 bank records in the adversary case no. 08-5273. Mr. Bassoni objects on the basis that the request
26 for documents from the bank is overly broad and requests bank records of other individuals.
27 Diemer, Whitman & Cardosi received his first motion to quash on August 24, 2009 regarding
28 plaintiff's subpoena of Wachovia Bank records. Diemer, Whitman & Cardosi received the second
motion to quash regarding our subpoena to Washington Mutual on August 31, 2009. Mr. Bassoni's
notice identifies specifically that any objections are due 10 days before the hearing and both notices
advised that the hearing date was set for September 23, 2009 at 2:15p.m.

MEMORANDUM OF POINTS AND AUTHORITIES

2 Rule 26(b) provides, in pertinent part, that unless otherwise limited by court order, the
3 parties may obtain discovery regarding any non-privileged matter that is relevant to any party's
4 claim or defense-including the existence, description, nature, custody, condition, and location of
5 any documents or other tangible things and the identity and location.

6 Federal Rule of Civil Procedure 26(b)(1) [hereinafter cited as Rule 26(b)(1)] specifies
7 that a party may obtain discovery about any non-privileged matter that is relevant to any party's
8 claim or defense.

9 Unless otherwise limited by court order, the scope of discovery is as follow: Parties may
10 obtain discovery regarding any nonprivileged matter that is relevant to any party's claim
11 or defense – including the existence, description, nature, custody, condition, and location
12 of any documents or other tangible things and the identity and location of persons who
know of any discoverable matter. ... Relevant information need not be admissible at the
trial if the discovery appears reasonably calculated to lead to the discovery of admissible
evidence.

13 FRCP 26(b)(1).

14 Rule 26(b)(1) is applicable in bankruptcy adversary proceedings pursuant to Bankruptcy Rule of
15 Procedure 7026.

16 Rule 26 F.R.Civ.P. applies in adversary proceedings.

17 B.R.P. 7026.

18 When a party files bankruptcy, they file a petition which is accompanied by schedules and a
19 statement of financial affairs. The statement of financial affairs states that a party must identify
20 all financial accounts and instruments which have been closed

21 List all financial accounts and instruments held in the name of the debtor or for the
22 benefit of the debtor which were closed, sold or otherwise transferred within one year
immediately preceding the commencement of this case. Include checking, savings, or
23 other financial accounts, certificates of deposit, or other instruments; shares and share
accounts held in banks, credit unions, pension funds, cooperatives, associations,
brokerage houses and other financial institutions.

Statement of Financial Affairs Number 11.

25 It is of note that Number 11 specifies that such closed accounts is not limited to those accounts in
26 the name of the debtor, but also those held for the benefit of the debtor.

Schedule B requires a Debtor to identify all open financial accounts. The directions

1 specify that a party must list all such personal property.

2 Except as directed below, list all personal property of the debtor of whatever kind.

3 Schedule B - Personal Property.

4 On Schedule B, category 2 requires a Debtor to identify all bank accounts.

5 2. Checking, savings or other financial accounts, certificates of deposit, or shares in
6 banks, savings and loan, thrift, building and loan, an dhomestead associations, or credit
unions, brokerage houses, or cooperatives.

7 Schedule B - Personal Property.

8 The statement of financial affairs requires that Debtor identify any accounts which he holds for
9 another person.

10 List all property owned by another person that the debtor holds or controls.

11 Schedule of Financial Affairs - 14.

12 In short, the information which the Plaintiff is asking for from Washington Mutual, and the
13 information which it is asking for from Wachovia, formerly World Savings, is information which
14 the Debtor was required to identify, *sua sponte*, in his schedules.

15 It is important to note, that the Debtor is required to sign the Statement of Financial
16 Affairs and the Schedules, under penalty of perjury. Failure to identify bank accounts which are
17 held in your name, even if those bank accounts have joint names, or are held for the benefit of
18 someone else constitutes a violation of the oath contained in the signature under penalty of
19 perjury.

20 Plaintiff's complaint includes a cause of action for non-dischargeability under 11 U.S.C.
21 Section 523(a)(2). 11 U.S.C. Section 523 authorizes a Court to deny a debtor discharge where
22 the Debtor obtained money from the plaintiff under false pretenses, including false pretenses, or
23 which is obtained through false representations of credit.

24 A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not
25 discharge an individual debtor from any debt – ... (2) for money, property, services, or an
extensions, renewal, or refinancing of credit, to the extent obtained by –(A) false
26 pretense's a false representation, or actual fraud, other than a statement respecting the
debtor's or an insider's financial condition; (B) use of a statement in writing – (i) that is
27 materially false; (ii) respecting the debtor's or an insider's financial condition; (iii) on
which the creditor to whom the debtor is liable for such money, property, services, or
credit reasonably relied; ...

1 11 U.S.C. Section 523(a)(2).

2 In order for the Plaintiff to determine if the Debtor's actions meet the requirements of 11 U.S.C.
3 section 523(a)(2), Plaintiff must obtain the documents at issue. It is certainly rational to believe
4 that the financial information in the Debtor's bank accounts at Wachovia and Washington
5 Mutual are likely to lead to admissible evidence concerning Debtor's finances at both the time of
6 the transactions, which is a critical element to this dispute, and currently.

7 Further, it is important to note, that when Debtor converted his case to a Chapter 11,
8 Plaintiff filed a second complaint, relating to the non-dischargeability of the Chapter 11. That
9 complaint is identified as Slawinski v. Bassoni, Northern District of California Case Number 09-
10 05185. That complaint includes a cause of action for denial of discharge pursuant to 11 U.S.C.
11 Section 727 (a)(2) and 11 U.S.C. Section 727(a)(4).

12 Section 727(a)(2) authorizes the Court to deny discharge where a debtor has concealed
13 property of the estate, either before, or after the date of the petition.

14 The court shall grant the debtor a discharge, unless – (2) the debtor, with intent to hinder,
15 delay, or defraud a creditor or an officer of the estate charged with custody of property
16 under this title, has transferred, removed, destroyed, mutilated, or concealed, or has
17 permitted to be transferred, removed, destroyed, mutilated, or concealed – (A) property
18 of the debtor, within one year before the date of the filing of the petition; or (B) property
19 of the estate, after the date of the filing of the petition. ...

20 11 U.S.C. Section 727(a)(2).

21 Debtor's failure to identify bank accounts, which in his motion to quash he admits exist, and
22 which may, or may not involve third parties, is clearly material to the Section 727(a)(2) action in
23 the Number 09-05185 action. Plaintiff should be allowed to obtain the information in order to
24 determine if, in fact, Debtor failed to identify in his petitions, both the Chapter 13, and the
25 Chapter 11, bank accounts in which he had an interest. Or if as Debtor claims, they are accounts
26 in which third parties have interests, but are held in his name, then Plaintiff is entitled to
27 determine the nature of the relationship with the third parties, and the ownership interests in the
28 funds at issue in the accounts.

29 Section 727(a)(4) prohibits a party from withholding information from an officer of the
30 estate, information about accounts.

The court shall grant the debtor a discharge, unless – (d) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs.

11 U.S.C. Section 727(a)(4).

Debtor's failure to identify bank accounts, which in his motion to quash he admits exist, and which may, or may not involve third parties, is clearly material to the Section 727(a)(4) action in the Number 09-05185 action. Plaintiff should be allowed to obtain the information in order to determine if, in fact, Debtor failed to identify in his petitions, both the Chapter 13, and the Chapter 11, bank accounts in which he had an interest, and as such should be denied his discharge.

Although Debtor complains about the scope of the request, he himself admits that the matters at issue go back many years. Limiting the scope as to years does not make sense, given the long period of time at issue. Plaintiff only asked for those accounts belonging to Mr. Bassoni. See Exhibit A and B to Declaration of Kathryn S. Diemer – the two subpoenas. As Debtor failed to identify any joint accounts, it was not possible for Plaintiff to provide any notification to any third parties who might require such notification.

CONCLUSION

Debtor's motion to quash is completely without merit. Debtor was obligated to provide this information in his schedules. He failed to do so, despite signing those schedules under penalty of perjury. He should not be allowed to avoid his obligations by filing a motion to quash.

Further, the material requested is clearly directly relevant to the non-dischargeability issues surrounding this Debtor. As Debtor refuses to comply with his obligations as a Debtor, Plaintiff was put to the trouble and expense of obtaining the information from the third party vendors. Plaintiff respectfully requests that this Court deny this motion to quash, and order

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1 Wachovia and Washington Mutual to provide the requested documents.

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5 Dated: September 14, 2009

DIEMER, WHITMAN & CARDOSI, LLP

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/Kathryn S. Diemer/

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By:

Kathryn S. Diemer, Esq.

10 Attorneys for Plaintiff Steve Slawinski

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